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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,925	08/27/2003	Walter Martin	22585-00001	1924
27144	7590	04/07/2004	EXAMINER	
FOSTER, SWIFT, COLLINS & SMITH, P.C. 313 SOUTH WASHINGTON SQUARE LANSING, MI 48933			COURSON, TANIA C	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/604,925

Applicant(s)

MARTIN, WALTER

Examiner

Tania C. Courson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 29AUG03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2 and 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Rhodes (US 4,731,037).

Rhodes disclose in Figures 1-3, a survival device comprising:

- a) a balloon element (Fig. 1, inflation device 10) having a substantially flat center portion (Fig. 1) and an inflatable peripheral edge (Fig. 1), an inflation valve assembly (Fig. 1, inflation valve assembly 28) connected to said peripheral edge (Fig. 1), a canister containing compressed gas connected to said inflation valve assembly (Fig. 3, compressed gas cartridge 34), and wherein said gas is expelled into said peripheral edge upon activation (Fig. 3);
- b) wherein said balloon element is substantially square shaped (Fig. 1);
- c) wherein said activation is by release of a pin (Fig. 1, pin 50);
- d) wherein said activation is by a water pressure switch (Fig. 3, valve 36).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes in view of Martin (US 4,913,672).

Rhodes discloses a survival device, as stated above in paragraph 2.

Rhodes does not disclose a balloon element is substantially circular shaped, a center portion including a first and second member and said first and second member form a pocket capable of holding an object, said object includes an anchor connected to an anchor line on one end and said anchor line is connected to one of said first and second members on a second end, said pocket further includes a closure element and further including a center inflated portion.

With respect to claims 3 and 7: the shape of the balloon element, i.e., circular shaped, center inflated portion, absent any criticality, are only considered to be obvious modifications of the shape of the balloon element (Fig. 1, inflation device 10) disclosed by Rhodes as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention. See *In re*

Dailey, 149 USPQ 47 (CCPA 1976). Therefore, one skilled in the art would change the shape of the balloon element in order to suit the needs of the user of the device.

With respect to a portion including a first and second member and said first and second member form a pocket capable of holding an object, said object includes an anchor connected to an anchor line on one end and said anchor line is connected to one of said first and second members on a second end and said pocket further includes a closure element, Martin teaches a survival device that consists of a portion including a first and second member and said first and second member form a pocket capable of holding an object (Fig. 1, anchor bag 13), said object includes an anchor connected to an anchor line on one end and said anchor line is connected to one of said first and second members on a second end (Fig. 1, anchor line 14 and anchor 15) and said pocket further includes a closure element (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the survival device of Rhodes, so as to include a portion including a pocket including an anchor, as taught by Martin, so as to provide a means for enhancing visibility of the device by maintaining the device in one location during use of the device.

Regarding to claim 4: Rhodes and Martin disclose the pocket on a portion of the device (Fig. 1, anchor bag 16). Changing the location of the pocket from the location shown by Rhodes and Martin to a location on a center portion of the device, absent any criticality, is only considered to be an obvious modification of Rhodes and Martin's device that a person having ordinary skill in the art at the time the invention was made would be able to provide using routine experimentation since the courts have held that there is no invention in shifting the

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position if the operation of the device would not be thereby modified. *In re Japikse*, 86 USPQ 70 (CCPA 1950). Therefore, one skilled in the art would change the location of the pocket in order to suit the needs of the user of the device.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose a signaling device:

Bianco (US 6,394,867 B1)

Ramsey (US 5,474,481)

Hull et al. (US 5,245,943)

Scesney (US 3,877,096)

Hansen (US 2,629,115)

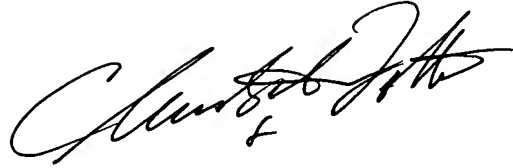
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239.

The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.

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The fax number for this Organization where this application or proceeding is assigned is
(703) 872-9306.

A handwritten signature in black ink, appearing to read 'Diego F.F. Gutierrez', with a stylized flourish at the end.

DIEGO F.F. GUTIERREZ
SUPERVISORY PATENT EXAMINER
GROUP ART UNIT 2859

TCC
April 2, 2004

CHRISTOPHER W. FULTON
PRIMARY EXAMINER